IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20/01/2004

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THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

W.P.No.6379 of 1999

I.Vijayakumar .. Petitioner

-Vs-

1. The Superintending Engineer
Tamil Nadu Electricity Board
Mettur Electricity Distribution
Circle, Mettur Dam-636 401.

2. The Presiding Officer
Labour Court
Salem. .. Respondents

PRAYER: Petition under Article 226 of the Constitution of India
praying to issue a writ of Certiorarified Mandamus as stated within.

For Petitioner : Mr.C.Selvaraju

For Respondents : Mr.V.Radhakrishnan
for first respondent

:ORDER

Aggrieved by the award dated 29.1.1998 passed by the second respondent confirming the order of dismissal dated 22.8.1988 passed by the first respondent, dismissing the petitioner from the service of the first respondent/Board, the petitioner seeks a writ of Certiorarified Mandamus to call for the records in I.D.No.61 of 1997, dated 29.1.1998 on the file of the second respondent and quash the same; and direct the first respondent to reinstate the petitioner in service with all consequential benefits.

2. Admittedly, a disciplinary action was initiated by the Assistant Executive Engineer by memorandum dated 28.7.1987 and charges were framed against the petitioner for his unauthorised absence with effect from 12.2.1987. The petitioner was served with questionnaire and was also permitted to offer his explanation to the said memorandum. But, the petitioner did not avail the opportunity of submitting an explanation nor answered the questions and therefore, one more opportunity was given to the petitioner to put forth his case before the Enquiry Officer. Before the

Enquiry Officer, the petitioner accepted the charges and therefore, the first respondent issued a show cause notice dated 7.12.1987. The petitioner submitted his explanation on 11.1.198 8. However, after taking into consideration the gravity of the charges and particularly the previous conduct of the petitioner, namely (i) unauthorised absence from 17.4.1982 to 22.9.1985 (three years, five months and five days); and (ii) unauthorised absence from 13.4.1986 to 11.2.1987 (nearly ten months), the first respondent by proceedings dated 22.8.1988 dismissed the petitioner from service with effect from 26.2.1988. Hence, the petitioner raised an industrial dispute, viz., I.D.No.61 of 1997 on the file of the second respondent under Section 2(A)(2) of the Industrial Disputes Act. The second respondent, after full-fledged hearing, by an award dated 29.1.1998 confirmed the order of dismissal passed by the first respondent/Board. Hence, this writ petition.

3. Mr.C.Selvaraju, learned counsel for the petitioner submits that the punishment imposed on the petitioner is excessive and therefore, pleads sympathy in the matter of punishment.

4. On facts, there is no dispute that disciplinary action was initiated against the petitioner for his unauthorised absence on three occasions, viz., (i) from 17.4.1982 to 22.9.1985 (three years, five months and five days); (ii) from 13.4.1986 to 11.2.1987 (nearly ten months); and (iii) from 12.2.1987. It is not the case of the petitioner that no charges were framed, no enquiry was conducted nor that he was not served with materials relied upon by the respondent or the enquiry report. The learned counsel for the petitioner, on the other hand, fairly concedes that the first respondent had complied with all procedural requirements before passing the order of dismissal pursuant to the disciplinary action initiated against the petitioner.

5. It is trite law that this Court exercising the power of judicial review under Article 226 of the Constitution of India cannot confer benediction impelled by sympathetic consideration. No doubt, Shakespeare said in Merchant of Venice:
"The quality of mercy is not strain'd; It droppeth, as the gentle rain from heaven upon the place beneath it is twice bless'd; it blessth him that gives, and him that takes;."

But, these words of mercy and sympathy, in my considered opinion, would not apply to all situations. Yielding to instinct will tend to ignore the cold logic of law. It should be remembered "law is the embodiment of all wisdom". Justice according to law is a principle as old as the hills. The Courts are to administer law as they find it, however, inconvenient it may be.

7. Once the impugned proceedings do not suffer from any procedural infirmities and in fullest compliance of the principles of natural justice, and the respondents have imposed the order of dismissal finding the petitioner guilty of the charges and also taking into consideration his chronic unauthorised absence, as referred to above, I do not find any reason to

interfere with the impugned award dated 29.1.1998 made in I.D.No.61 of 1997 on the file of the second respondent.

This writ petition is dismissed. No costs.

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To:

1. The Superintending Engineer
Tamil Nadu Electricity Board
Mettur Electricity Distribution
Circle, Mettur Dam-636 401.

2. The Presiding Officer
Labour Court
Salem.

Sasi